

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BAYER SCHERING PHARMA AG and)
BAYER HEALTHCARE PHARMACEUTICALS, INC.,)

) Case No.: 2:10-cv-01166-GMN-RJJ

Plaintiffs,

VS.

LUPIN LTD. and LUPIN PHARMACEUTICALS, INC.,)
Defendants.)

ORDER

Defendants.

10 Plaintiffs Bayer Schering Pharma AG and Bayer Healthcare Pharmaceuticals, Inc.
11 (collectively “Bayer”) and Defendants Lupin Ltd. and Lupin Pharmaceuticals, Inc. (“Lupin”)
12 jointly move the Court for entry of an order consolidating this action with a related action,
13 Civil Action No. 2:08-cv-00995-KJD-GWF consolidated with 2:07-cv-01472-KJD-GWF
14 (base case), entitled *Bayer Schering Pharma AG, et al. v. Watson Pharmaceuticals, Inc.*,
15 *Watson Laboratories, Inc., and Sandoz, Inc.* (ECF No. 9).

The base case, 2:07-cv-01472-KJD-GWF is over three years old. Fact discovery in the base case closed approximately September 1, 2010. Judge Dawson recently denied Plaintiff's motion to supplement and amend its complaint because it would prejudice the defendants in that action. (2:07-cv-01472-KJD-GWF, ECF No. 243). The court reasoned that the need to reopen discovery which would delay the proceedings for all defendants supported a finding of prejudice. Likewise, allowing the Lupin case to be consolidated with the base case would severely delay the resolution of the base case. Motions for summary judgment have already been filed in the base case which may resolve the matter. If the cases were to be consolidated the defendants in the base case would be prejudiced by the need of the parties in the new case to complete discovery. The Court will not grant the motion to

1 consolidate because it finds that the consolidation will only delay the proceedings and in turn
2 prejudice the defendants in the base case.

3 However, the Court does recognize the parties' argument that permitting the same
4 judge to adjudicate both actions will prevent inconsistent rulings with respect the patents-in-
5 suit. Therefore the Court will order that the case be transferred to Judge Dawson if no
6 objection is filed by the parties within 14 days from the date of this Order.

7 IT IS HEREBY ORDERED that Plaintiffs Bayer Schering Pharma AG and Bayer
8 Healthcare Pharmaceuticals Inc. and Defendants Lupin Ltd. and Lupin Pharmaceuticals,
9 Inc.'s Joint Motion to Consolidate (ECF No. 9) is DENIED.

10 DATED this 1st day of March, 2011.

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13 Gloria M. Navarro
14 United States District Judge
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